

**ORIGINAL**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION**

**SINGLE BOX, L.P. and SB AB WEST  
LOOP, L.P. f/k/a SB FINCO AB, L.P.**

**Plaintiffs,**

**vs.**

**BRETT DEL VALLE,  
PRP MENIFEE, LLC, and  
PENINSULA RETAIL PARTNERS V,  
LLC**

**Defendants.**

**CIVIL ACTION NO. 4:19-CV-00530-A**

CLERK OF DISTRICT COURT  
NORTHERN DIST. OF TX  
FORT WORTH DIVISION  
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NORTHERN DIST. OF TX  
FORT WORTH DIVISION  
FILED  
2019 AUG 29 PM 12:15  
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**RESPONSE TO DEFENDANTS' MOTION TO DISMISS**

Plaintiffs Single Box, L.P. ("**SB**") and SB AB West Loop, L.P. f/k/a SB Finco AB, L.P. ("**West Loop**," and together with SB, "**Plaintiffs**"), file this Response to the Motion to Dismiss on the Basis of Forum Non Conveniens filed by Defendants Brett Del Valle ("**Del Valle**"), PRP Meniffee, LLC ("**PRP Meniffee**"), and Peninsula Retail Partners V, LLC ("**PRP V**") (together, the "**Defendants**"), and respectfully show the Court as follows:

1. As set forth in more detail in Plaintiffs' *Brief in Support* filed contemporaneously with this Motion, venue is proper in Texas under the parties' previously agreed-upon forum selection clause.

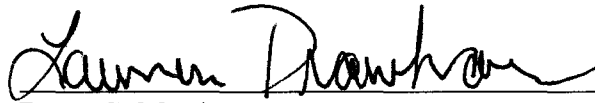
2. The Defendants expressly waived the right to object to Texas as the appropriate venue and complain that Texas is an inconvenient forum in the parties' written contracts. However, consistent with its other blatant breaches of its obligations under the parties' contracts, Defendants now seek to dismiss this lawsuit, both objecting to Texas as an appropriate venue and claiming Texas is an inconvenient forum. Nevertheless, the case law supports Texas as the

proper venue and this Court should hold Defendants to their contract and enforce the forum selection clauses.

3. Valid forum selection clauses are given controlling weight in all but the most exceptional cases, which is not the case here. *See, Atlantic Marine Const. Co., Inc. v. U.S. Dist. Ct.*, 571 U.S. 49, 63 (U.S. 2013). Although Defendants argue that the Plaintiffs waived the forum selection clause by initiating a non-judicial foreclosure in California, the Plaintiffs neither intentionally relinquished their rights under the forum selection clause nor substantially invoked the judicial process to the Defendants' detriment or prejudice. *See, e.g., Wellogix Inc. v. SAP Amer. Inc.*, 648 Fed. Appx. 398, 401 (5th Cir. 2016). Instead, due to the valid forum selection clause in the parties' contracts, the private *forum non conveniens* factors are deemed to weigh in favor of Texas and the public *forum non conveniens* factors do not defeat the forum selection clause.

Accordingly, based on the foregoing and Plaintiffs' Brief in Opposition, Plaintiffs respectfully request that the Court deny Defendants' Motion to Dismiss, determine the forum selection clauses in the Contracts are valid and enforceable, and grant Plaintiffs such other and further relief, at law or in equity, to which they may be entitled.

Respectfully submitted,



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**ATTORNEYS FOR PLAINTIFFS,  
SINGLE BOX, L.P. AND SB AB WEST  
LOOP LP F/K/A SB FINCO AB, LP**

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing instrument was served on the following counsel of record pursuant to the Federal Rules of Civil Procedure via the Court's ECF noticing system on this 29th day of August 2019:

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